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David J. Wilson

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/731,019
Filing Date: December 07, 2000
Appellant(s): WILSON, DAVID J.

Paul J. Urbanski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/1/2010 appealing from the Office action mailed 9/30/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,789,075	NIELSEN	9-2004
6,230,185	BEIR	5-2001

NOWTHIS.COM blog entry, Posted on <http://nowthis.com> on Nov. 24, 1999

Epinions.com preview, posted on <http://www.epinions.com> on Oct. 12, 1999.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, 9, 11, 12, 14, and 16 are rejected under 35 U.S.C. 103(a) as obvious over NOWTHIS.COM (NOWTHIS.COM, blog entry, Nov 24, 1999), hereinafter referred to as Nowthis, in view of Nielsen (U.S. Pat. No. 6,789,075).

With regard to claim 1, Nowthis discloses a method for identifying as being helpful or otherwise valuable product/service reviews in a database coupled to a distributed communication network, the method comprising:
displaying product/service reviews from the database on a client display connected to the database over the network (Nowthis: Page 2. As the user has the opportunity to rate reviews given to a product, it is clear that the user must have been presented with the review for a specific product. Accordingly, it is clear that Amazon retrieves the reviews from some database, then presents the reviews to the user.);
providing an interactive element associated with each of the displayed reviews on the client display, which when clicked by a user, indicates that the user has found a

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displayed review associated with the product/service helpful in determining whether or not to purchase the product/service (Nowthis: Page 2. Nowthis discloses that the Amazon page includes "Was it helpful to you? [YES] [NO]."

As Amazon utilizes a web page, some interactive element is clicked by a user (such as the [YES] [NO]) to indicate whether the review was useful.);

receiving at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications for the review (1) in response to the indication (Nowthis: page 2. Amazon indicates how many people found the review useful, meaning a tally is maintained and incremented for each vote.); and

displaying the count of the stored number of indications for the review on the client display together with the review (Nowthis: Page 2. As the phrase refers to "this review," it is apparent that the count is presented with the review that is referred to as "this review.");

recurrently tallying the number of indications (Nowthis: Page 2. Amazon has many users, and utilizes a web page for an interface. Further, the user viewing the current page has the current tally (before voting), then has the opportunity to vote, meaning that the vote is tallied recurrently (e.g. before a particular user votes and after a particular user votes).).

However, Nowthis does not appear to disclose expressly:

incrementing the count of a stored number of indications (2) if the stored number of indications does not exceed one indication for the review from the user;

sending an error to the user if the interactive element is clicked more than once by the user for the review;

sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order; and

re-sorting the reviews for a subsequent display.

However, Nielsen discloses ranking web information elements according to an attribute in each element, displaying the elements in sorted order (see column 3, lines 10-32; column 7, lines 35-41).

It would have been obvious to modify the disclosure of Nowthis to sort the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order; and re-sorting the reviews for a subsequent display.

The suggestion/motivation for doing so would have been that sorting lists in databases according to one of the attributes stored in the database is a well known operation that allows the information being displayed to be displayed in the most convenient manner for the user. In this case, Amazon, as disclosed by Nowthis, is concerned with providing the user with useful reviews, and allowing the user to make a more educated purchasing decision based on the reviews. Accordingly, sorting the reviews in a manner in accordance with the reviews (e.g. most helpful reviews first) would allow the user to immediately see the most relevant reviews, thus reducing the effort required by the user to read non-helpful reviews, or manually scan the list for the

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most helpful reviews. Further, as many users utilize Amazon, any functionality performed for one user should be performed for each and every user, meaning that the sorting of the list presented for the first user should be sorted for each other user. Further, the sorted list should present the most current information. Accordingly, a person of ordinary skill in the art would have been clearly motivated to resort the list after the vote has been tallied for the next user to view the reviews.

Further, Official Notice (see MPEP 2144.03) is taken that it would have been well known to only allow a particular user to vote once in a survey, election, or any other functionality where the input of many users is desired, and to provide feedback as to whether the vote was cast or not.

Accordingly, it would have been obvious to modify the teachings of Nowthis as modified by Nielsen to increment the count of a stored number of indications if the stored number of indications does not exceed one indication for the review from the user and send an error to the user if the interactive element is clicked more than once by the user for review.

The suggestion/motivation for doing so would have been that the disclosure of Nowthis explicitly states that “1 people found the review helpful. 0 did not.”

Accordingly, it is apparent that Amazon is interested in getting one input per person. Further, limiting each person to only one vote ensures that a single individual cannot unduly skew a product review by repeatedly voting a certain way. Accordingly, limiting each person to one review ensures that the reviews marked as being helpful were actually helpful to the stated number of users. Further, providing an error in situations

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where a user has voted more than once allows a user to be aware of the current status of the actuating of the interactive element. To ensure that a user knows that the interactive element was properly actuated, some sort of feedback would be required, where a successful vote would indicate that the vote would be successful, and the non-successful vote would indicate that the vote was not successful. Without this, a user would click on the link, and be unsure as to whether a vote was cast or not.

With regard to claim 7, Nowthis as modified by Nielsen discloses the invention as substantially claimed except:

compiling a list of reviewers including names of those reviewers who have received a highest number of indications for their product/service reviews; and displaying the list of reviewers on the client display.

However, Official Notice is taken that it would have been well known to extract information on reviewers and provide a list of the reviewers, including the reviewers with the highest number of indications, and display the list.

Accordingly, it would have been obvious to modify the teachings of Nowthis as modified by Nielsen to:

compile a list of reviewers including names of those reviewers who have received a highest number of indications for their product/service reviews; and display the list of reviewers on the client display.

The suggestion/motivation for doing so would have been that in cases where the reviews have not yet been voted on, or the votes are very limited (as in the example in

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Nowthis on page 2), information on each reviewer who reviewed the product, including some information on how helpful the reviews of the particular reviewer are, would allow a user to evaluate the likelihood of the review being helpful based on the reviewers other reviews.

With regard to claims 9, 11-12, 14, and 16, the instant claims are substantially similar to claims 1 and 7, and are rejected for substantially similar reasons.

Claim Rejections - 35 USC § 103

Claims 1, 7, 9, 11, 12, 14, and 16 are rejected under 35 U.S.C. 103(a) as obvious over Epinions (WWW.EPINIONS.COM, Oct 12, 1999), hereinafter referred to as Epinions, in view of Salas et al. (U.S. Pat. No. 6,230,185), hereinafter referred to as Salas, and in further view of Nielsen (U.S. Pat. No. 6,789,075).

With regard to claim 1, Nowthis discloses a method for identifying as being helpful or otherwise valuable product/service reviews in a database coupled to a distributed communication network, the method comprising:
displaying product/service reviews from the database on a client display connected to the database over the network (Nowthis: Page 2);
providing an interactive element associated with each of the displayed reviews on the client display, which when clicked by a user, indicates that the user has found a displayed review associated with the product/service helpful in determining whether or not to purchase the product/service (Epinions: Page 10. The user is

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asked if they found the opinion "Very Useful," "Useful," "Somewhat Useful," or "Not Useful.");

receiving at the database an indication that the user has clicked the interactive element, and incrementing a count of a stored number of indications for the review (1) in response to the indication (Epinions: Page 9, "Rating Summary". As information on how many users found the review to be useful, it is clear that the count of indications is being maintained by a database after the users vote for how useful the review was.); and

displaying the count of the stored number of indications for the review on the client display together with the review (Epinions: Page 9);

recurrently tallying the number of indications (Epinions: Pages 9-10. As the user votes for the review on the same web page as the "Rating Summary," it is clear that the results will be tallied again when the user votes.).

However, Epinions does not appear to disclose expressly:

incrementing the count of a stored number of indications (2) if the stored number of indications does not exceed one indication for the review from the user;

sending an error to the user if the interactive element is clicked more than once by the user for the review;

sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order; and

re-sorting the reviews for a subsequent display.

However, Nielsen discloses ranking web information elements according to an attribute in each element, displaying the elements in sorted order (see column 3, lines 10-32; column 7, lines 35-41).

It would have been obvious to modify the disclosure of Epinions to sort the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order; and re-sorting the reviews for a subsequent display.

The suggestion/motivation for doing so would have been that sorting lists in databases according to one of the attributes stored in the database is a well known operation that allows the information being displayed to be displayed in the most convenient manner for the user. In this case, Epinions, is concerned with providing the user with useful reviews, and allowing the user to make a more educated purchasing decision based on the reviews, as shown on page 8, "Who needs another buying guide?" Accordingly, sorting the reviews in a manner in accordance with the reviews (e.g. most helpful reviews first) would allow the user to immediately see the most relevant reviews, thus reducing the effort required by the user to read non-helpful reviews, or manually scan the list for the most helpful reviews. Further, as many users utilize Epinions, any functionality performed for one user should be performed for each and every user, meaning that the sorting of the list presented for the first user should be sorted for each other user. Further, the sorted list should present the most current information. Accordingly, a person of ordinary skill in the art would have been clearly

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motivated to resort the list after the vote has been tallied for the next user to view the reviews.

Further, Salas discloses that it would have been well known to only allow a particular user to vote once in a survey, election, or any other functionality where the input of many users is desired (Salas: column 16, lines 33-54).

Accordingly, it would have been obvious to modify the teachings of Nowthis as modified by Nielsen to increment the count of a stored number of indications if the stored number of indications does not exceed one indication for the review from the user and send an error to the user if the interactive element is clicked more than once by the user for review.

The suggestion/motivation for doing so would have been that the disclosure of Nowthis explicitly states that “1 people found the review helpful. 0 did not.” Accordingly, it is apparent that Amazon is interested in getting one input per person. Further, limiting each person to only one vote ensures that a single individual cannot unduly skew a product review by repeatedly voting a certain way. Accordingly, limiting each person to one review ensures that the reviews marked as being helpful were actually helpful to the stated number of users. Further, providing an error in situations where a user has voted more than once allows a user to be aware of the current status of the actuating of the interactive element. To ensure that a user knows that the interactive element was properly actuated, some sort of feedback would be required, where a successful vote would indicate that the vote would be successful, and the non-

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successful vote would indicate that the vote was not successful. Without this, a user would click on the link, and be unsure as to whether a vote was cast or not.

With regard to claim 7, Nowthis as modified by Nielsen discloses the invention as substantially claimed except:

compiling a list of reviewers including names of those reviewers who have received a highest number of indications for their product/service reviews; and displaying the list of reviewers on the client display.

However, Official Notice is taken that it would have been well known to extract information on reviewers and provide a list of the reviewers, including the reviewers with the highest number of indications, and display the list.

Accordingly, it would have been obvious to modify the teachings of Nowthis as modified by Nielsen to:

compile a list of reviewers including names of those reviewers who have received a highest number of indications for their product/service reviews; and display the list of reviewers on the client display.

The suggestion/motivation for doing so would have been that in cases where the reviews have not yet been voted on, or the votes are very limited (as in the example in Nowthis on page 2), information on each reviewer who reviewed the product, including some information on how helpful the reviews of the particular reviewer are, would allow a user to evaluate the likelihood of the review being helpful based on the reviewers other reviews.

With regard to claims 9, 11-12, 14, and 16, the instant claims are substantially similar to claims 1 and 7, and are rejected for substantially similar reasons.

(10) Response to Argument

Issue 1: On pages 12-13, Appellant attempts to traverse the finding of Official Notice that allowing a particular user to vote once in a survey election, or any other functionality where the input of many users is desired, and to provide feedback as to whether the vote was cast or not."

According to MPEP 2144.03 C, "to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well known."

Meanwhile, in Appellant's arguments, Appellant argues that "The Office Action has not provided technical reasoning or scientific reasoning to support the conclusion that the elements were well known at the time of the invention of the present Application." First, it is noted that this does not constitute a statement of why the noticed fact is not considered to be common knowledge or well known. Further, reasoning was provided.

As stated in the rejection of claim 1, Nowthis.com's blog entry is directing attention to a statement on Amazon.com, "1 people found this review helpful. 0 did not. Was it helpful to you? [YES] [NO]" Thus, it is apparent that Amazon.com intended for

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each vote to correlate to a person, rather than simply to a click, as it points out that a certain number of "people" found this review helpful. Further, it is noted that Amazon.com does maintain user accounts, and invites a user to logon to the website when accessing <http://amazon.com> (see attached document showing <http://amazon.com>) by providing a statement "Already a customer? Sign in." where the words "Sign in" are a hyperlink to which a user may enter in a user name and password.

Thus, it is clear that Amazon.com keeps track of people on its web site, and that the ratings are advertised as being votes cast by "people." Accordingly, Amazon.com had the means to track whether a person associated with an account voted on a review or not, and had motivation to do so, as allowing one vote per person would keep the user evaluations of the review fair.

As for the second component of the Official Notice, the concept of sending an error to the user, is likewise not adequately traversed by Appellant, as Appellant provides no argument that shows that a person of ordinary skill in the art would not have been capable of sending a message when a transaction (vote) could not be properly completed. A commonly used message in the networking arts was ACK and NACK messages. As can be seen in US 5,319,710 to Atalla, ACK and NACK messages are used to communicate the state of a transaction. The ACK and NACK messages are utilized to provide feedback in order to convey information about the state of the communication. Messages such as the ACK and NACK messages have been utilized in one form or another in most network communications, as in order to provide for efficient communications, feedback is needed in order for a system to know the status

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of a communication. In the instant example, without a NACK message of some sort, a user who places a vote for a review after having already placed a vote would never receive any information on the status of the vote. Thus, the user would not be sure if the vote has been accepted or rejected. By at least providing some feedback in the form of some sort of NACK message, the user would then know that the vote was sent, but not accepted.

Further, it is noted that there is no recitation in the instant claim about the structure or nature of the error, but rather broadly recites that an "error" is sent in a certain condition with no requirements as to what constitutes an error. Thus, the simple NACK messages, as was well known in the art, is equivalent to the "error" in as much detail as required by the instant claims.

Thus, lacking any arguments from Appellant that demonstrates how "allowing a particular user to vote once in a survey election, or any other functionality where the input of many users is desired, and to provide feedback as to whether the vote was cast or not" was not well known in the art, and in view of the above arguments, it is clear that a person of ordinary skill in the art with a knowledge of Amazon.com, and the reviews, as demonstrated by Nowthis.com, would have known how to, and been motivated to, allow a person to vote only once in a election, and to send an error message to the user if the user tries to vote more than once.

Issue 2: On pages 13-14, Appellant argues that Nowthis.com is merely a blog entry, and no evidence shows whether more than one review was ever stored by Amazon.

However, a person of ordinary skill in the art, when presented with the disclosure of Nowthis.com, and recognizing that Amazon.com is a site that services a large number of individuals, would recognize that Amazon.com would at least have the capability to store more than one review, and more than one vote for each review. In fact, the entire statement that is being referred to by Nowthis.com, "1 people found this review helpful. 0 did not. Was it helpful to you? [YES] [NO]", is clearly referring to the problem with the word "people." Clearly, when the voting system of Amazon.com was developed, careful attention was not paid to situations where no votes or only one vote was cast, as the language was not catered for these situations. Rather, Amazon.com was clearly expecting many votes, with the word "people" utilized in order to agree with the expected number of votes. Thus, the statement, in itself, would lead a person of ordinary skill in the art who was aware of both Amazon.com and the Nowthis blog entry to conclude that Amazon.com allowed many reviews, and more than one vote per review.

Issue 3: On pages 14-15, Appellant argues that the priority attribute in Nielsen is static and set by the author of the web file, thus the priority attribute of Nielsen is not useful for recurrently tallying the number of indications from users and re-sorting the reviews for subsequent display.

However, it is noted that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

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See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Nielsen discloses the concept of sorting elements according to an attribute in the element, then displaying the elements in sorted order. When this concept is combined with a review evaluation system, such as that implemented by Amazon.com, as shown in Nowthis.com, it is clear that a person of ordinary skill in the art would have been capable of, and motivated to, utilize well known database operations, such as that in Nielsen, to sort the reviews in Amazon.com to present the reviews in the most advantageous manner possible, such as by number of votes.

Thus, Appellant's arguments against how the priorities are obtained in Nielsen are irrelevant, as a combination of references were utilized to reject the instant claims. Accordingly, the rejection of claims 1, 7, and 14 should be maintained for the reasons provided in Issues 1, 2, and 3.

Issue 4: On page 16, Appellant argues that the comparison performed in Salas is not the same as that recited in independent claim 1.

In the rejection of claim 1, Salas was utilized to show that it was well known to only allow a particular user to vote once in a survey, election, or other functionality where the input of many users is desired. When this disclosure is applied to the disclosure of Epinions, the tally of Epinions, would thus only reflect one vote per person.

Meanwhile, it is unclear what exact comparison is performed within the claim 1 that Appellant is referring to. No step is provided that actually performs the comparison.

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Rather, the instant claim performs specified functionality "if" a certain condition is true, the condition being that the stored number of indications does not exceed one indication for the review from the user. Accordingly, to teach this subject matter, as in claim 1, a reference only needs to teach that a vote can be cast if the votes cast by the user does not exceed 1 (e.g. the user has not previously voted). Thus, the teaching of Salas to allow one vote per user clearly meets this claim limitation, as the vote of Salas can only be placed if the user has not voted previously.

Issue 5: On pages 16-17, Appellant argues the finding of Official Notice. However, it is noted that this finding is substantially similar to part of the finding argued in Issue 1, and thus, the arguments presented with regard to Issue 1 applies to this argument as well.

Issue 6: On pages 17-18, Appellant argues the application of Nielsen with Epinions as modified by Salas. However, this argument appears substantially similar to that presented on pages 14-15, and thus, were addressed by Issue 3, above.

Issue 7: On page 18, Appellant argues that Epinions does not disclose displaying the count of the stored number of indications for the review on the client display together with the review.

However, on page 9 of Epinions, the "Rating Summary" is provided on the left side, along with information on the number of users that found the review "Very Useful" and "useful," along with the review on the same page.

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Accordingly, in view of the above, the rejections of claims 1, 7, 9, 11, 12, 14, and 16 under 35 USC 103(a) should be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/S. C./

Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

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Supervisory Patent Examiner, Art Unit 2451